MONTANA LEGISLATIVE HISTORY

Chapter 222 1993

Bill H _____ S 436 Original bill & history ____C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Feb 20	✓ C	Hearing Date(s) Feb 06	✓ C
Feb 23	✓ C	_____	____C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out _____	____C		

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

February 20, 1973

JUDICIARY COMMITTEE

The thirty sixth meeting of the HOuse Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Tuesday, February 20, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representative Greely, absent, and Representative Marbut, absent, excused.

Chairman Hall opened the meeting, stating committee would take up for hearing Senate Bills 269, 436, 441 and 424.

SENATE BILL 424 Senator Larry Aber, District #7, chief sponsor, summarized this bill pertaining to false mining claims. He then introduced Mr. Larry Huss, representing the office of the attorney general as an expert on this bill. Mr. Huss testified the attorney general's office during the past two years had been deluged with complaints on Meryl Zweiffel who stakes out entire counties. Staking and filing in this state are slipshod at best. Proposed bill is almost a verbatim copy of bill submitted by attorney general in Nevada. Stated this bill does not cure problems on land already staked out in Eastern Montana. Senate passed this bill unanimously and urged the house to pass it also. No opponents to bill. Following questions from the committee the hearing was closed.

SENATE BILL 269 Senator Jean A. Turnage, District #17, chief sponsor, stated this bill is an amendment to the existing code section relating to contents of master plan in building areas. Only changes are on pages one and two. Proponent Ross Cannon, representing Montana Mobile Homes Association, testified there were many people who requested this bill. Went into background of mobile homes and quoted statistics on types of housing and other figures regarding housing. Not talking about presently zoned areas but areas to be taken into zoning consideration. Also present as proponents to Senate Bill 269 were Walter Saushajus and Erv Sorensen, both representing Montana Mobile Homes Association. Opponent Dean Zinnicker, representing Montana Association of County Commissioners, testified that zoning merely requires housing should be included in area plan. Very brief testimony. No other opponents. Following questions from committee members the hearing was closed.

SENATE BILL 436 Senator Jean A. Turnage, District #17, summarized this bill, stating there had been another similar bill in the Senate and that the Senate selected this bill as thought it might be better drafted. Legislation proposed is to provide authorization for some one faced with claim for damages to make payment without fear will be an admission of liability. Feels bill will be a useful tool. John W. McDonald, representing Mountain Bell, urged passage of this bill. Following brief questioning from committee the hearing was closed.

Motion BE CONCURRED IN carried with Representatives Lucas and Greely voting no. Representative Towe will carry.

SENATE BILL 442 Chairman Hall stated this was bill sponsored by Senator Gilfeather pertaining to cooperatives. Representative Lucas stated the provision on page three of quorum of no more than fifty nor less than five bothered him. Representative Lucas moved to amend on page 3, lines 7, 8, 9, 10 and 11 by striking the material "Unless the articles or bylaws fix a larger number of stockholders as a quorum, a quorum shall never be more than fifty (50) or less than five (5) stockholders, or shall be a majority of the stockholders, whichever is smaller.". Representative Bell seconded. Motion carried unanimously. Representative Lucas moved that bill AS AMENDED BE CONCURRED IN. Motion carried unanimously. Representative Lucas will carry.

SENATE BILL 441 Chairman Hall stated this bill sponsored by Senator Turnage deletes requirements of residency and minority in estates of $10,000 or less. Representative Bell moved BE CONCURRED IN. Representative Baucus seconded. Representative Lucas and Towe feel a real conflict on minors receiving an estate. Feels no discretion left to court. Are altering laws of dissent and distribution in state of Montana. Doesn't like removal of residency portion of bill. Representative Lucas made a substitute motion that Senate Bill 441 NOT BE CONCURRED IN. Representative Towe seconded. Representative Lucas stated he felt the general idea of bill is admiral and hopes probate code will address itself to this problem. Substitute motion BE NOT CONCURRED IN failed with Representatives Brown, Towe, Lucas and Warfield voting yes. Committee reverted to original motion BE CONCURRED IN. Motion carried with Representatives Lucas, Towe, Brown and Warfield voting no. Representative Baucus will carry.

SENATE BILL 436 This bill sponsored by Senator Turnage concerns voluntary payment of claims of personal injury or property damage claims. Representative Bell stated he felt this matter was pretty well taken care of by case law. Representative Lucas moved BE CONCURRED IN and stated he is running into cases where we need this law. Representative Towe seconded. In discussion Representative Roberts found that if insurance company overpays they have no recourse for getting back excess payment and questioned whether this would cause some reluctance to make payments. Motion BE CONCURRED IN carried unanimously. Representative Lucas will carry.

SENATE JOINT RESOLUTION 16 Senator Hazelbaker is chief sponsor of this resolution on which hearing was conducted earlier in meeting. Representative Warfield moved BE CONCURRED IN. Representative Towe seconded. Motion carried unanimously. Representative Greely will carry.

SENATE JUDICIARY COMMITTEE---February 6, 1973

The committee was called to order by chairman, Luke McKeon. All members were present. The first bill discussed was HB 75 which was sponsored by Rep. Greely who spoke to the committee. Other speakers were:
1) Fred Moulton, Chairman, Board of Bar Examiners--opposed HB 75.
2) Ted James, Board of Bar Examiners,--opposed HB 75.

The following action on bills was taken:

SB 305 Sen. Moore moved this bill do not pass; Sen. Mathers seconded the motion; and the committee voted this bill DO NOT PASS.

SB 225 Sen. Turnage moved this bill do pass; Sen. Hall seconded the motion; and the committee voted this bill DO PASS.

SB 391 Sen. Turnage moved this bill do not pass; Sen. Mathers seconded the motion; and the committee voted this bill DO NOT PASS.

SB 442 Sen. Turnage moved this bill do pass; Sen. Mathers seconded the motion; and the committee voted this bill DO PASS.

SB 441 Sen. Moore moved this bill do pass; Sen. Boylan seconded the motion; and the committee voted this bill DO PASS.

SB 436 Sen. Harrison moved this bill do pass; Sen. Turnage seconded the motion; and the committee voted this bill DO PASS.

SB 263 Sen. Harrison moved this bill do not pass; Sen. Turnage seconded the motion; and the committee voted this bill DO NOT PASS.

SB 391 Sen. Turnage moved this bill do not pass; Sen. Boylan seconded the motion; and the committee moved this bill DO NOT PASS.

SB 178 Sen. Turnage moved this bill do not pass; Sen. Mathers seconded the motion; and the committee voted this bill Do NOT PASS.

SB 172 Sen. Turnage moved this bill do not pass; Sen. Hall seconded the motion; and the committee voted this bill DO NOT PASS.

questing such assistance on any matter relating to coal development on Indian reservation lands, and may make an appropriate charge therefor.

Approved: March 8, 1973.

CHAPTER NO. 222

An Act to Provide for the Voluntary Payment of Personal Injury or Property Damage Claims Without Such Payment Constituting an Admission of Liability.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. The legislative assembly hereby declares that the health, welfare and safety of the people of the state of Montana would be enhanced by the expeditious handling of liability claims. The legislative assembly further declares that the handling of such claims would be expedited if voluntary payment by or on behalf of one person to or on behalf of a person who has sustained injury to his person or damage to his propery could not be construed as an admission of fault or liability as to any claim arising out of the occurrence which gave rise to such injury or damage.

Section 2. As used in this act, the word "person" includes any individual, partnership, joint venture, unincorporated association, private or municipal corporation, the state and its political subdivisions.

Section 3. No voluntary partial payment of a claim against any person based on alleged liability of that person for injury to person, including death, or damage to property arising out of any occurrence shall be construed as an admission of fault or liability, or as a waiver or release of claim by the person to whom or in whose behalf such payment was made. No voluntary partial payment shall be construed to reduce the amount of damages which may be pleaded or proved in any action arising out of such occurrence. The fact of any such voluntary payment, or its amount, shall not be admissible as evidence on the trial of any action arising out of such occurrence, whether on the issue of liability, the extent of the damage or otherwise. Upon final settlement between the parties of a claim arising out of such occurrence, the parties may make any agreement they wish with respect to all voluntary partial payments. After entry of a judgment in an action for damages for personal injuries, including death, or for damage to property arising out of any occurrence, any voluntary partial payment theretofore made shall be treated as a credit against

such judgment, and shall be deductable from the amount of such judgment. If after partial voluntary payments are made as herein provided for, it shall be determined by a court of competent jurisdiction that the person who made such payments, or on whose behalf such payments were made, is liable for an amount which is less than the amount of the voluntary payments already made, such person shall have no right of action for the recovery of the amount by which the voluntary payments exceeded the amount of the judgment.

Section 4. It is the intent of the legislative assembly that each part of this act is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Approved: March 8, 1973.

CHAPTER NO. 223

An Act to Remove Requirements of Residency and Minority in Probate of Estates of Net Value Less Than Ten Thousand Dollars ($10,000); and Amending Sections 91-5301, 91-5304, 53-5305, 91-5308 and 91-5310, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 91-5301, R.C.M. 1947, is amended to read as follows:

"91-5301. **Estate may be set aside to surviving spouse or child —net value of estate must be less than ten thousand dollars.** If a decedent leaves a surviving spouse or child or children, and the net value of the whole estate, over and above all liens and encumbrances at the date of death and over and above the value of any homestead interest set apart out of decedent's estate under chapter 25, Title 91, R.C.M. 1947, does not exceed the sum of ten thousand dollars ($10,000), the same may be set aside to the surviving spouse, if there be one, and if there be none, then to the child or children of the decedent."

Section 2. Section 91-5304, R.C.M. 1947, is amended to read as follows:

"91-5304. **Petition to set aside estate—requirements.** Allegations showing that this act is applicable together with a prayer that the estate be set aside as provided in this act may be included alternately in the petition for probate of the will, or for letters